IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 8199 OF 2004

Akbarali Abdulhusain & Sons & Ors. ..Petitioners.

Versus

Pandharpur Municipal Council ..Respondent.

Mr. G. S. Godbole for the Petitioners.

Mr. S.S.Patwardhan for the Respondent No.1.

CORAM : S. A. BOBDE, J.

DATED : 05TH AUGUST, 2005.

P.C.:

1. Rule, returnable forthwith.

. Mr. Patwardhan waives service of rule for the Respondent.

. Heard by consent.

2. The petitioners are the owner of a suit property situated within the jurisdiction of Pandharpur Municipal Council, the respondent No.1. The Municipal Council has raised a demand against each

of the petitioners for taxes on lands and buildings. The petitioners have challenged the demand notice under section 169 (2)(b) of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act, 1965 before the judicial Magistrate.

3. The learned judicial Magistrate has rejected the petitioners' appeal on the ground that the petitioners have not deposited the amount demanded by the Municipal Council. In other words, on the ground that the petitioners have not deposited the amount of the disputed bills. Aggrieved by this finding, the petitioners preferred revision application before the Additional Sessions Judge, Pandharpur, who has confirmed the finding of the Judicial Magistrate, First Class, Pandharpur. By this petition, the petitioners have challenged the said order of the revisional court.

4. Having heard the learned counsel for the parties, I am of view that the orders of the courts below suffer from an error of law apparent on their face. Section 170 of the Maharashtra Municipal Councils Nagar Panchayats and Industrial Townships Act reads as follows :-

170. Procedure in appeal :- No [appeal under the last preceeding section] shall be entertained unless -

[(a) the appeal, -

(i) under sub-section (1) or under clause (b) of sub-section (2) of Section 169 is brought within [Thirty days] next after the presentation of the bill complained of;

(ii) under clause (a) of sub-section (2) of section 169, to the Property Tax Appeal Committee is brought within [Thirty days] next after the presentation of the bill complained of; and

(iii) under the proviso to sub-section (2) of Section 169, to the Judicial Magistrate against the decision of the Property, Tax Appeal Committee is, brought within [Thirty days] next after the decision of the Committee;

[Provided that, in cases where the

persons to whom the notices of demand or bills have been served after the 1st April, 1995, and who have not been able to file appeals against such claim for taxes made in the bills to the Property Tax Appeal Committee within the time limit specified, may file appeals to the Property Tax Appeal Committee within ninety days next, after the coming into force of the Maharashtra Municipal Council, Nagar Panchayats and Industrial Townships (Amendment) Act, 1996. (21 of 1996).]

(b) .....

[(c) (i) the appellant under sub-section (1) of Section 169 has paid in the municipal office the full amount included in the bill; and

(ii) the appellant under sub-section (2) of Section 169 has paid in the municipal officer,-

(A) the full amount of tax as paid by him for the last preceding assessment year :

(B) in respect of new properties being assessed for the first time, thirty percent of the amount of tax claimed in the bill by the Council;].

5. It is obvious from the plain reading of the above provisions that the appellant is liable to pay as a pre-condition, to entertain his appeal, "the full amount of tax as paid by him for the last preceding assessment year", and not the disputed amount of the disputed bills. For example, if the appellant is challenging the bill of the year 2000, he is bound to pay, as condition precedent for entertaining his appeal, the full amount of tax as paid by him for the assessment year of 1998 to 1999.

6. In this view of the matter, the impugned orders of both the courts below, are set aside. The learned Judicial Magistrate, First Class, before whom the petitioners have preferred their appeal, is directed to entertain the appeal on the petitioners' depositing the full amount of tax paid by him in the preceding assessment year, as indicated above.

7. Rule is made absolute in the above terms.

Dt.05.08.2005 (S.A.BOBDE,J.)

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